

1889  
JULY 18  
CRIMINAL  
REVISION.  
14 B. 93.

must be construed strictly and in favour of the liberty, and rights of the subject. To make s. 43 applicable, there ought to have been, beyond the possession, some affirmative evidence in the case of the facts necessary to constitute an offence under that section. We, therefore, held the accused was only properly convicted of the minor offence. The sentence of imprisonment, which he has partly suffered, would not have been inflicted under s. 47, and that which remains must be remitted. The conviction under s. 43 must be reversed, and in consideration of the term of imprisonment already suffered, one-half of the fine must be remitted.

14 B. 97.

[97] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

NATHJI MULESHVAR AND OTHERS (*Original Defendants*),  
*Appellants v. LALBHAI RAVIDAT (Original Plaintiff),*  
*Respondent.*

LALBHAI RAVIDAT (*Original Plaintiff*), *Appellant v. NATHJI*  
*MULESHVAR AND OTHERS (Original Defendants), Respondents.\**  
[18th July, 1889].

*Defamation—Libel in judicial proceedings—Privilege—Liability to damages by civil action for such defamation.*

No action for slander lies for any statement in the pleadings or during the conduct of a suit against a party or witness in it.

The plaintiff claimed to recover damages from the defendants for publishing defamatory matter in an application they had filed in a suit brought against them by one M., in which the plaintiff was described by the defendants as a person "whose occupation it was to obtain his living by getting up such fraudulent actions," and that he was induced to make a false claim by the plaintiff. The application appeared to have been made with the object of having other persons made parties to that suit.

*Held*, that the defendants were privileged against a civil action for damages for what they may have said of the plaintiff in the application they had presented in that suit.

*Seaman v. Netherclift* (1) and *Baboo Ganesh v. Mugneeram Chowdhry* (2) referred to and followed.

[*Diss.*, 23 C. 867; 3 L.B.R. 265; N.F. 5 C.W.N. 293; R., 17 B. 573; 19 B. 340; 19 B. 717 (729); 17 C.L.J. 105=17 C.W.N. 554=18 Ind. Cas. 737; 13 Cr.L.J. 275=14 Ind. Cas. 659=23 M.L.J. 39=11 M.L.T. 416=(1912) M.W.N. 476.]

CROSS second appeals against a decision of G. Jacob, Joint Judge of Ahmedabad, reversing the decree of Rav Saheb Ranchhodlal K. Desai, Subordinate Judge of Umreth.

This action arose out of the following circumstances:—

One Mulji Gangadat brought suit No. 472 of 1885 for the recovery of certain property against the defendants and others in the Court of the Subordinate Judge of Umreth. During the pendency of that suit the defendants put in an application on the 25th March, 1885, the contents of which were as follows:—

"Shelat Lalbhai Ravidat (plaintiff), whose occupation is to earn his livelihood by getting up such fraudulent actions with a selfish motive, and

\* Cross Second Appeals Nos. 603 and 726 of 1887.

(1) L. R. 1 C. P. D. 545.

(2) 11 B. L. R. (P. C.) 321 (328).

who intends to acquire property sued for without valuable consideration, has induced the plaintiff, who [98] knows that his claim is false, and that he has no right to the said property, to bring this suit. This and other facts will be shown at the time when proper persons, who should be made parties in the suit, put in their defence."

The plaintiff brought the present suit to recover damages from the defendants for defamatory matter contained in the above statement, alleging that the imputation was untrue, malicious and without probable cause and likely to harm his reputation.

The defendants admitted that they had made the application, but at the same time contended that they were privileged in making the imputation, having regard to the circumstances of the case and the conduct of the plaintiff.

The Court of first instance rejected the plaintiff's claim, holding the imputation privileged.

The plaintiff appealed to the Joint Judge, who reversed the decree of the lower Court and awarded Re. 1 as damages from the defendants, with costs in both Courts.

The parties preferred cross second appeals to the High Court.

*Gokuldas Kahandas*, for the appellants:—The imputation was privileged. Any imputation by a witness or party to a judicial proceeding is privileged. Refers to Odger on Libel, 187, Ed. 1887; *Hinde v. Baudry* (1).

*Goverdhanram Madhavram*, for the respondents:—The imputation was defamatory, and the mere circumstance that it was made in a judicial proceeding does not protect the defendants—*Abdul Hakim v. Tej Chandar Mukarji* (2). A person making a defamatory imputation must prove it to be true, and show reasonable ground for believing it—*Shibnath Tulaputro v. Sat Cowree Deb Moonsiff* (3).

#### JUDGMENT.

The judgment of the Court was delivered by

SARGENT, C. J. —This is a suit for damages for publishing defamatory matter in an application made by the defendants in a suit (in which Mulji Gangadat was the plaintiff and the defendants [99] in the present suit were the defendants) with the object of having other persons made parties, and in which they stated that the plaintiff had been induced to make a false claim by the present plaintiff Lalbhai Ravidat, "whose occupation it was to obtain his living by getting up such fraudulent actions." The Subordinate Judge held that no action would lie considering that the English law was applicable, and that express malice was not proved. The Joint Judge, on the other hand, held that an action would lie, as the defendants failed in proving "that they had reasonable and probable cause for believing them to be true, and that they had made the imputation *bona fide* for the protection of their own interests."

It is settled law in England that no action for slander lies for any statement in the pleadings or during the conduct of the case. See the remarks of Lord Coleridge in *Seaman v. Netherclift* (4) and the cases there referred to.

(1) 2 M. 13 (14).

(3) 3 W. C. R. 198.

(2) 3 A. 815.

(4) L. R. 1 C. P. D. 545.

1889  
JULY 18.  
—  
APPEL-  
LATE  
CIVIL.  
—  
14 B. 97.

In *Abdul Hakim v. Tej Chandar Mukarji* (1), where the defamatory matter was contained in a petition preferred in a judicial proceeding, the High Court of Allahabad held that the English law was not suited to the circumstances of this country, and that they ought to appeal to the principles embodied in the Penal Code to supply the tests by which the liability or otherwise of defendants to civil suits should be decided.

This view of the law would equally apply to similar actions against judges, witnesses and counsel for defamatory statements in the course of a judicial proceeding, which by English law are held not to lie, even if the statements be *mala fide* and spoken with express malice—*Scott v. Stansfield* (2); *Munster v. Lamb* (3); *Dawkins v. Lord Rokeby* (4). However in *Baboo Gunesh Dutt Singh v. Mugneeram Chowdhry* (5), the Privy Council held in 1872 that the same rule applied to witnesses in this country. And again in *Hinde v. Baudry* (6) the Madras Court treated it as plain that an action would not lie against a party or witness [100] for a statement made in a suit, whether malicious or not, but doubted whether the defendant could strictly claim to fill either of the above positions.

We doubt whether there is anything in the circumstances of this country which makes it less desirable from the point of view "of public policy as concerning the public and administration of justice" as it is expressed by the Privy Council in the case above cited, that such statements, though false and malicious, should in no case be made the subject of civil action quite independently of the question as to their being criminally punishable.

We are, therefore, of opinion that the defendants were privileged against a civil action for damages for what they may have said of the plaintiff in the application they presented in the suit, and that the decree of the Court below must, therefore, be reversed, and the plaint dismissed with costs on plaintiff throughout.

*Decree reversed.*

14 B. 100.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.*

MAHOMEDALI (Plaintiff) v. BAYAMA (Defendant).<sup>\*</sup>  
[25th July, 1889.]

*Jurisdiction*—*Provincial Small Cause Courts Act IX of 1887, s. II, cl. 35 (c)*—*Suit to recover costs of a criminal prosecution.*

No suit will lie to recover costs incurred in defending a criminal prosecution. The only way of recovering such costs is by a suit for damages for malicious prosecution.

THIS was a reference from Major N. Smith, Judge of the Court of Small Causes of the Poona Cantonment, under s. 617, Civil Procedure Code, in suit No. 27 of 1889.

<sup>\*</sup> Civil Reference No. 5 of 1889.

(1) 3 A. 815,

(3) L. R., 11 Q. B. D. 588.

(5) 11 B. L. R. (P. C.), 321 (328).

(2) L. R. 3. Exch. 220,

(4) L. R. 7 H. L. 753.

(6) 2 M. 13 (14).